UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/850,343	05/07/2001	Christopher R. Vincent	POU920000191US1	2305

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ART UNIT	PAPER NUMBER
2145	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

	Application No.	Applicant(s)
Office Action Summary	09/850,343	VINCENT, CHRISTOPHER R.
	Examiner	Art Unit	
	Jeffrey R. Swearingen	2145	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *23 April 2007*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-20* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application

6)☐ Other: _____.

DETAILED ACTION

1.   This case has been reassigned to a new examiner.

Response to Arguments

2.   Applicant's arguments with respect to claims 1-20 have been considered but are moot in view of

the new ground(s) of rejection. The citations are meant to aid Applicant in preparing the response, but

the rejection is over the prior art IN ITS ENTIRETY. Applicant is responsible for reading the prior art in its

entirety.

Specification

3.   The disclosure is objected to because it contains an embedded hyperlink and/or other form of

browser-executable code. Applicant is required to delete the embedded hyperlink and/or other form of

browser-executable code. See MPEP § 608.01.

4.   The use of multiple trademarks has been noted in this application. They should be capitalized

wherever they appear and be accompanied by the generic terminology.

        Although the use of trademarks is permissible in patent applications, the proprietary nature of the

marks should be respected and every effort made to prevent their use in any manner which might

adversely affect their validity as trademarks.

Claim Rejections - 35 USC § 101

5.   35 U.S.C. 101 reads as follows:

> Whoever invents or discovers any new and useful process, machine, manufacture, or composition of
> matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the
> conditions and requirements of this title.

6.   Claims 9-20 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-

statutory subject matter. Claims 9-16 are directed toward a machine-readable medium. No support is

present within the specification for a machine readable medium. For purposes of compact prosecution,

the definition of computer readable medium found on page 14 of the originally filed specification will be

utilized as the definition of machine readable medium. In the definition of computer readable medium,

Applicant has claimed both statutory media (non-volatile memory) and non-statutory media (computer

readable information in a transitory state medium such as a network link and/or a network interface

including a wireless network). Page 14, lines 13-17. Signals and "transitory state media" such as

wireless network interfaces or links are not statutory subject matter. See Annex IV of the Interim

Guidelines for Patent Examination of Statutory Subject Matter.

7.   Claims 17-20 are directed toward a "user node", which may be "realized in hardware, software, or

a combination of hardware and software". Specification, page 13, line 22. Because the user node has

nothing in the claims that requires hardware to be present based upon the specification, the claims covers

intangible and non-statutory embodiments.

Claim Rejections - 35 USC § 102

8.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for

the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9.   Claims 1-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Chapman et al. (US

7,114,003 B2).

10.   In regard to claims 1 and 9 and 17, Chapman disclosed:

> *receiving, at a first user node of the network from one of the user nodes through a direct*

connection, a resource request to be published; column 7, lines 21-30

> *determining whether to send the resource request to a publish-subscribe server node or*

to send the resource request to another of the user nodes; column 7, lines 51-58

> *forwarding the resource request from the first user node to a second user node of the*

network, when it is determined to send the resource request to another of the user nodes; and

column 7, lines 51-58

> sending the resource request form the first user node to the publish-subscribe server
>
> node for publication to a plurality of the user nodes of the network, when it is determined to send
>
> the resource request to the publish-subscribe server node. Column 7, lines 51-58

11.   In regard to claims 2 and 10 and 18, Chapman disclosed:

> in the determining step, the determination of whether to send the resource request to the
>
> publish-subscribe server node or to send the resource request to another of the user nodes is a
>
> random decision made by the first user node. Column 6, lines 18-39

12.   In regard to claims 3 and 11 and 19, Chapman disclosed:

> in the determining step, the random decision is made based on a weighting factor
>
> corresponding to the probability that the first user node will decide to send the resource request to
>
> the publish-subscribe server node. Column 6, lines 40-53; column 9, lines 28-41

13.   In regard to claims 4 and 12 and 20, Chapman disclosed:

> the forwarding step includes the sub-steps of:
>
> > randomly selecting one of the user nodes to which the first user node is
> >
> > connected to be the second user node; and column 8, lines 17-30
> >
> > forwarding the resource request from the first user node to the second user node
> >
> > through a direct connection. Column 8, lines 17-30

14.   In regard to claims 5 and 13, Chapman disclosed:

> sending, via publication from the publish-subscribe server node, the resource request to
>
> at least some of the user nodes of the network. Column 6, lines 18-39

15.   In regard to claims 6 and 14, Chapman disclosed:

> in the step of sending via publication from the publish-subscribe server node, the publish-
>
> subscribe server node sends the resource request to all of the user nodes of the network that are
>
> subscribed to one or more resource request channels. Column 6, lines 40-53

16.   In regard to claims 7 and 15, Chapman disclosed"

repeating the steps of determining and forwarding until in the determining step a user

node that received the resource request decides to send the resource request to the publish-

subscribe server node. Column 6, lines 10-39

17.   In regard to claims 8 and 16, Chapman disclosed:

sending the resource request to be published from a requesting user node, which desires

the request resource, to the first user node through a direct connection. Column 6, lines 10-39;

column 8, lines 17-30

18.   Claims 1-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Heimbigner ("Adapting

Publish/Subscribe Middleware to Achieve Gnutella-like Functionality.", Proceedings of the 2001 ACM

Symposium on Applied Computing, March 2001, 176-181).

19.   In regard to claims 1 and 9 and 17, Heimbigner disclosed:

receiving, at a first user node of the network from one of the user nodes through a direct

connection, a resource request to be published; page 178 refers to a client sending a query

determining whether to send the resource request to a publish-subscribe server node or

to send the resource request to another of the user nodes; paragraph 2, page 178 explains that a

local copy of a filter is applied first before forwarding to another server

forwarding the resource request from the first user node to a second user node of the

network, when it is determined to send the resource request to another of the user nodes; and

page 178, second paragraph dealing with forwarding messages

sending the resource request form the first user node to the publish-subscribe server

node for publication to a plurality of the user nodes of the network, when it is determined to send

the resource request to the publish-subscribe server node. A subscription filter is forwarded to all

peers in paragraph 2, page 178

20.   In regard to claims 2 and 10 and 18, Heimbigner disclosed:

in the determining step, the determination of whether to send the resource request to the

publish-subscribe server node or to send the resource request to another of the user nodes is a

random decision made by the first user node. A timeout as taught on 179 uses a random

decision based on a seed in the computer to decide when the clock has timed out.

21.   In regard to claims 3 and 11 and 19, Heimbigner disclosed:

        in the determining step, the random decision is made based on a weighting factor

corresponding to the probability that the first user node will decide to send the resource request to

the publish-subscribe server node. This is the efficiency taught on page 179.

22.   In regard to claims 4 and 12 and 20, Heimbigner disclosed:

        the forwarding step includes the sub-steps of:

            randomly selecting one of the user nodes to which the first user node is

        connected to be the second user node; and page 178, paragraph 2

            forwarding the resource request from the first user node to the second user node

        through a direct connection. Page 178, paragraph 2

23.   In regard to claims 5 and 13, Heimbigner disclosed:

        sending, via publication from the publish-subscribe server node, the resource request to

at least some of the user nodes of the network. Page 178, paragraph 2

24.   In regard to claims 6 and 14, Heimbigner disclosed:

        in the step of sending via publication from the publish-subscribe server node, the publish-

subscribe server node sends the resource request to all of the user nodes of the network that are

subscribed to one or more resource request channels. Page 178, paragraph 2

25.   In regard to claims 7 and 15, Heimbigner disclosed:

        repeating the steps of determining and forwarding until in the determining step a user

node that received the resource request decides to send the resource request to the publish-

subscribe server node. Page 178, paragraphs 2 and section 4

26.   In regard to claims 8 and 16, Heimbigner disclosed:

        sending the resource request to be published from a requesting user node, which desires

the request resource, to the first user node through a direct connection. Page 178, paragraph 2

Conclusion

27. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Fanning et al.   US 6,742,023 B1

Lechner et al. "Communities – Business Models and System Architectures: The Blueprint of

MP3.com, Napster and Gnutella Revisited." Proceedings of the 34th Annual Hawaii International

Conference on System Sciences. January 2001. 10 pages.

28. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office

action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of

the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from

the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date

of this final action and the advisory action is not mailed until after the end of the THREE-MONTH

shortened statutory period, then the shortened statutory period will expire on the date the advisory action

is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX

MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should

be directed to Jeffrey R. Swearingen whose telephone number is (571) 272-3921. The examiner can

normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor,

Jason Cardone can be reached on 571-272-3933. The fax phone number for the organization where this

application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application

Information Retrieval (PAIR) system. Status information for published applications may be obtained from

either Private PAIR or Public PAIR. Status information for unpublished applications is available through

Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should

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or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-

1000.

Jason Cardone
Supervisory Patent Examiner
Art Unit 2145

JRS